Supreme Court, U.S.
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No 91-1231

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PETITIONER

v.

ALVIN J. DIXON

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL FOSTER

ON WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

JOINT APPENDIX

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

No. F-8415-88

UNITED STATES

v.

MICHAEL FOSTER

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
7/21/88	Defendant informed of rights pursuant to Superior Court rule 5(b) including the right to counsel. $20,000 S bond. Prel Hearing set 7-28-88.
7/28/88	• • • Count B held for Grand Jury action. All parties are present. $20,000 surety bond. O/C filed within.
11/22/88	Motion to dismiss complaint and to enjoin permanently all grand jury proceedings and points and authorities in support thereof filed 11-1-88 and forwarded to J. Scott.
11/28/88	Govt's opposition to motion to dismiss filed 11-22-88.
12/12/88	Deft's reply to govt's opposition to deft's motion to dismiss and enjoin grand jury filed 12-8-88.
1/9/89	Indictment filed, counts C-G.

DATE	PROCEEDINGS
4/7/89	* * * Court denied deft motion to dismiss indictment. Court granted the motion of the Women's Legal Deft fund for leave to appear as an amicus curiae. * * *
4/10/89	Notice of Appeal filed this date felony.
11/4/91	* * * The status is cont to permit the AUSA to review the court of Appeals ruling in this case.
11/22/91	Certified copy from DCCA reversing Appeal.
12/3/91	Pursuant to the Mandate recv'd from the DCCA, the judgment on appeal is reversed and this case is remanded for further proceedings.
12/5/91	* * * Case cont for additional Status for the court to review the various filed documents.
12/10/91	* * * The case is cont for additional status per the govt's request.
1/17/92	* * * Hearing held. Deft motion to dismiss case is granted. Case dismissed w/prejudice by the court.
1/28/92	Govt's motion to reconsider dismissal of indictment.
2/3/92	Deft's opposition to govt's motion to reconsider dismissal of indictment.
2/6/92	Order entered denying govt's motion to reconsider dismissal of indictment.
2/14/91	Notice of Appeal filed in felony.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 89-449

MICHAEL FOSTER

v.

UNITED STATES

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/22/89	[APPELLANT'S] DOCKETING STATEMENT
11/1/89	ARGUED
11/28/89	ORD: SUA SPONTE CONSOLIDATING THIS APPEAL WITH NO. 88-1375 FOR THE PURPOSE OF EN BANC ARGUMENT * * *. THIS APPEAL TO BE REHEARD EN BANC ON 1/10/90 AT 10:00 A.M.
12/28/89	MISC. PROCEDURAL MOTION OF WOMENS LEGAL DEFENSE FUND, MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
1/8/90	ORDER GRT MO OF WOMEN'S LEGAL DEFENSE FUND TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS

DATE	PROCEEDINGS
1/10/90	ARGUED • • •
11/22/91	MANDATE ISSUED
12/9/91	MISC. SUBSTANTIVE MOTION OF [APPELLEE] TO RECALL MANDATE
12/13/91	[APPELLANT'S] OPPOSITION TO [APPELLEE'S] MOTION TO RECALL MANDATES
2/5/92	MISC. SUBSTANTIVE MOTION OF [APPELLEE] TO HOLD ABEYANCE MOTION TO RECALL MANDATE
6/11/90	JUDGMENT: AFFIRMED • • •
10/10/90	ORDER filed denying petition for en banc rehearing • • •
10/18/90	MANDATE ISSUED • • •

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

No. F-442-88

UNITED STATES

v.

ALVIN J. DIXON

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/21/88	INDICTMENT FILED • • •
8/12/88	MTNS Hearing held pursuant to Deft's MTN to dismiss the indictment on the grounds of double jeopardy. Court will take mtn under advisement. • • •
9/29/88	Opinion and order filed. Defendant's motion to dismiss indictment granted.
10/25/88	Notice of Appeal filed this date in felony.

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 88-1375

UNITED STATES, APPELLANT

v.

ALVIN DIXON, APPELLEE

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
11/2/88	[APPELLANT'S] DOCKETING STATEMENT
5/9/89	ARGUED
11/28/89	ORD: SUA SPONTE CONSOLIDATING THIS APPEAL WITH NO. 89-449 FOR THE PURPOSE OF EN BANC ARGUMENT • • •. THIS APPEAL TO BE REHEARD EN BANC ON 1/10/90 AT 10:00 A.M.
1/8/90	[GRANT] MO[TION] OF WOMEN'S LEGAL DEFENSE FUND TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS
1/10/90	ARGUED • • •
10/31/91	AFFIRMED. JUDGMENT AF JUDGMENT AS TO DIXON (RV JUDGMENT AS TO FOSTER IN 89-449)

DATE	PROCEEDINGS
11/22/91	MANDATE ISSUED
12/9/91	MISC. SUBSTANTIVE MOTION OF [APPELLANT] TO RECALL MANDATE
12/13/91	[APPELLEE'S] OPPOSITION TO [APPELLANT'S] MOTION TO RECALL MANDATE
1/21/92	RECEIVED SUPPLEMENT TO OPPOSITION TO MOTION TO RECALL MANDATES
2/3/92	NOT. OF FIL. PET FOR CERT
2/5/92	MISC. SUBSTANTIVE MOTION OF [APPELLANT] TO HOLD ABEYANCE MOTION TO RECALL MANDATE

PDID#197763
CASE#87068896

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

United States of America
v.

Case No. F2670-87

Alvin James Dixon Sr. (Defendant's name) 140 57th Place, SE (Defendant's address) (202) 575-8460 (Defendant's phone no.)

YOU ARE HEREBY RELEASED ON THE CONDITIONS INDICATED BELOW:
THESE CONDITIONS WILL BE IN EFFECT UNTIL YOUR CASE IS DISPOSED OF OR UNTIL THEY ARE CHANGED OR AMENDED BY A JUDGE

☐	PERSONAL PROMISE	PERSONAL RECOGNIZANCE. Your personal recognizance, provided that you promise to appear at all scheduled hearings, trials, or otherwise as required by the Court.
☐	$ _____	UNSECURED APPEARANCE BOND. Your personal unsecured appearance bond, to be forfeited should you fail to appear as required by the Court.
☐	SUPERVISORY CUSTODY	You hereby agree to be placed in the custody of _____ who agrees (a) to supervise you in accordance with the conditions below, (b) to use every effort to assure your appearance at all scheduled hearings, trials, or otherwise, and (c) to notify the D.C. Pretrial Services Agency immediately in the event you violate any condition of release or disappear. Agency telephone — 727-2800. ▶ _____ (Custodian's name) _____ (Custodian's address) _____ (Custodian's phone no.) ▶ _____ SIGNATURE OF CUSTODIAN
☐	YOU ARE TO STAY	☐ away from the complaining witness. ☐ within the D.C. area.
☐	YOU ARE TO LIVE	☐ at _____ (address) _____ (phone no.) ☐ with _____ (name and relationship to defendant) _____ (phone no.) ☐ at _____ (address) _____ (phone no.) being in at night from ____ P.M. to ____ A.M.
☐	YOU ARE TO	☐ seek to obtain employment and report your progress to the D.C. Pretrial Services Agency every _____ days at 727-2800. ☐ maintain your present employment at _____ (employer's name and address) or notify the D.C. Pretrial Services Agency at 727-2800 of any change in employment.
☐	YOU ARE TO STUDY	☐ by enrolling in school at _____ (name and address) ☐ by maintaining your student status at _____ (name and address)
☐	NARCOTICS	☐ Report to the D.C. Pretrial Services Agency, Room C-220, for narcotics evaluation and possible placement. ☐ Report to the D.C. Pretrial Services Agency, Room C-220, for program placement, and refrain from illegal drug use. ☐ Maintain Program participation at: ☐ PSA ☐ ADASA ☐ Other _____ and refrain from illegal drug use.
☐	YOU ARE TO REPORT TO	☐ D.C. Pretrial Services Agency ☐ Weekly ☐ Other _____ ☐ By Phone ☐ In Person ☐ Probation Officer ☐ Weekly ☐ Other _____ ☐ By Phone ☐ In Person ☐ Parole Officer ☐ Weekly ☐ Other _____ ☐ By Phone ☐ In Person
☒	REVIEW	You are to report to the D.C. Pretrial Services Agency at room 1214 immediately upon release for a review of conditions.
☒	YOU ARE TO	Refrain from committing any criminal offense, the penalties for which are explained on the reverse side of this Order.
☒	OTHER	Leaving area
	MONEY BOND IN $ 1500 cash	CASH BOND. Upon execution of appearance bond, to be forfeited should you fail to appear as required by the Court, secured by a deposit, such deposit to be returned when the Court determines you have performed the conditions of your release. You will deposit in the registry of the Court _____%. ☒ SURETY BOND. Upon execution of appearance bond with approved surety.
	NEXT DUE BACK	on 3-17-87 in Courtroom 16 at 9:30 AM. If you have any questions about the date, time, or location CALL THE D.C. PRETRIAL SERVICES AGENCY AT 727-2800.
	YOUR ATTORNEY	_____ (address) _____ (phone no.)
	DEFENDANT'S SIGNATURE	▶ _____ I understand the penalties which may be imposed on me for willful failure to appear or for violation of any condition of release and agree to comply with the conditions of my release and to appear as required.

WITNESSED BY PDS (title or agency) PSA

IMPORTANT: YOU ARE TO NOTIFY IMMEDIATELY THE D.C. PRETRIAL SERVICES AGENCY, 500 INDIANA AVE., N.W., FIRST FLOOR, TELEPHONE NUMBER 727-2800, OF ANY CHANGE OF ADDRESS, EMPLOYMENT, OR CHANGE IN STATUS OF ANY RELEASE CONDITIONS. ANY REARREST FOR ANY OFFENSE BASED ON PROBABLE CAUSE MAY BE GROUNDS FOR REVOCATION OF THIS ORDER.

SO ORDERED

Date 03-09-87

▶ _____ Signature of Judge

WHITE—TO COURT PAPERS
GREEN—TO D.C. PRETRIAL SERVICES AGENCY
BLUE—TO DEFENDANT
YELLOW—TO DEFENSE ATTORNEY
GOLD—TO CUSTODIAN
PINK—TO U.S. ATTORNEY

FORM CD-CR(Rev. 6)

BEST AVAILABLE COPY

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Holding a Criminal Term
Grand Jury Sworn in on January 4, 1988

Criminal No: F-442-88

THE UNITED STATES OF AMERICA

v.

ALVIN J. DIXON

Violation: 33 D.C. Code 541(a)(1)
(Unlawful Possession with Intent to Distribute a Controlled Substance)

The Grand Jury charges:

On or about January 15, 1988, within the District of Columbia, Alvin J. Dixon did unlawfully, knowingly and intentionally possess with intent to distribute a quantity of cocaine, a Schedule II controlled substance. (Unlawful Possession with Intent to Distribute a Controlled Substance, in violation of 33 D.C. Code, Section 541(a)(1))

/s/ Joseph E. diGenova
Attorney of the United States in and for the District of Columbia

A TRUE BILL:

/s/ Rufus E. Lassiter
Foreperson.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH

Criminal Case No: F-2670-87

UNITED STATES OF AMERICA

v.

ALVIN J. DIXON

JUDGE WALTON
Trial: June 13, 1988

MOTION TO MODIFY BOND

The United States of America, by and through its Attorney, the United States Attorney for the District of Columbia, respectfully moves the Court to modify bond in the instant case.

1. On March 8, 1987 the defendant, Mr. Alvin J. Dixon, was arrested and charged with murder. Mr. Dixon was subsequently indicted and charged with first degree murder. Mr. Dixon was arraigned on that case, the instant case, and a trial date was set. Mr. Dixon was released on a fifteen hundred ($1,500.00) surety bond on March 9, 1987.

2. On January 15, 1988 Mr. Dixon was arrested and later charged by the Grand Jury with possession with intent to distribute cocaine. When Mr. Dixon was presented on the January 15 charge (F-422-88) the Pretrial Services Agency (PSA) indicated drug use. Indeed, as part of his conditions of release in F-422-88, Mr. Dixon was to report

to PSA for drug testing; as of February 18, 1988 he has failed to report.

3. We request that Mr. Dixon be summoned to court to show cause why his conditions of pretrial release should not be modified, in the instance case. Although Mr. Dixon appeared for a status hearing in F-422-88 on February 22, 1988 we nonetheless submit that his obvious drug abuse and commission of another offense, as found by the Grand Jury, mandates judicial review.

WHEREFORE, the United States requests that its motion be granted.

Respectfully submitted

/s/ Joseph E. diGenóva
JOSEPH E. diGENOVA
United States Attorney

/s/ Ronald Dixon
RONALD DIXON
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed with postage prepaid to counsel for defendant, Michelle Roberts, Esquire, Public Defender Service, 451 Indiana Avenue, N.W., Washington, D.C. 20001, on this 23rd day of February 1988.

/s/ Ronald Dixon
RONALD DIXON
Assistant United States Attorney

cc: Judge Von Kann

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

F-2670-87

UNITED STATES OF AMERICA

v.

ALVIN J. DIXON, SR.

ORDER TO SHOW CAUSE

On March 8, 1987, defendant was arrested and charged with murder in the second degree while armed, and released into the community on a $1,500 surety bond on March 10, 1987.[1] Among the conditions of defendant's pretrial release imposed by the Court were the requirements that he "[r]efrain from committing any criminal offense . . ." Nevertheless, this Court has been informed that defendant was rearrested and indicted for a violation of the Uniform Controlled Substance Act (possession with intent to distribute cocaine) in Criminal Case No. F-422-88.

This infraction constitutes a violation of the conditions of defendant's probation and could, therefore, result in defendant being held in contempt of court or having the conditions of his pretrial release modified.

---

[1] An indictment was filed against defendant on December 2, 1987. In the three count indictment, defendant is charged with kidnapping while armed, first degree murder while armed and carrying a pistol without a license.

Wherefore, it [is] on this 29th day of March, 1988, hereby ORDERED that defendant show cause why he should not be held in contempt of court or have the conditions of his pretrial release modified.

Defendant is placed on notice that a Show Cause Hearing shall be held before the Honorable Reggie B. Walton at 9:00 a.m. on April 8, 1988, in Courtroom 14 of the District of Columbia Courthouse. At such hearing defendant is entitled to be represented by counsel and may produce any witnesses or evidence on his behalf.

The government is also ordered to have the appropriate witnesses present at the hearing and prepared to testify concerning the alleged violation of defendant's pretrial release conditions.

/s/ Reggie B. Walton
Judge REGGIE B. WALTON

Copies mailed to:

Alvin J. Dixon, Sr.
140 57th Place, S.E.
Washington, D.C. 20019

Michele A. Roberts, Esquire
Public Defender Service
451 Indiana Avenue, N.W.
Washington, D.C. 20001

Ronald Dixon, AUSA
U.S. Attorney's Office
Felony Trial Service

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Criminal Action No. F-2670-87

UNITED STATES OF AMERICA

v.

ALVIN DIXON, JR.

Washington, D.C.
Wednesday, April 20, 1988

---

[54] * * * * *

THE COURT: Well, the Court has been put on notice of the existence of alleged violation, and the Court was put on notice pursuant to a motion filed by the Government, and the Court was fully aware of the nature of the alleged violation, having issued an order to show cause based upon [55] the violation. I think it merely is a technicality that the Government ask the Court to take judicial notice of this.

I think the Government's burden is to show that there was in fact a crime committed by the defendant while he was on pretrial release. And once the Government shows that then I have to decide whether or not the sanctions should be imposed because the defendant has already been put on notice that the Court is fully aware of the fact that one of the conditions of his release was the commission of no further offenses.

So while I may tend to agree that it is inappropriate for the Government, after its hand has been—after the hand

of the defense has been tipped by closing argument to permit reopening, I don't think that reopening is necessary, considering the circumstances present here.

I would conclude that based upon testimony presented that the Government has established, beyond a reasonable doubt, that the defendant was in possession of drugs and that those drugs were possessed with the intent to distribute them. But, in any event, he was in possession. So even the mere possession, or the possession with intent to distribute, would be a violation of the conditions of his release. And accordingly, I would find the defendant in contempt of Court.

* * * * *

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Case No. F-2670-87
PDID No. 197763

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA

vs.

ALVIN DIXON, JR.

JUDGMENT AND COMMITMENT/PROBATION ORDER

The above-named defendant having entered a plea of Not Guilty to the Charge(s) of Contempt of Court-rearrest and having been found guilty by Court, it is hereby ORDERED that the defendant has been convicted of and is guilty of the offense(s) charged, and is hereby SENTENCED to 180 days.

MANDATORY MINIMUM term does not apply.

ORDERED that the defendant be committed to the custody of the Attorney General for imprisonment for the period imposed above.

ORDERED that the Clerk deliver a true copy of this order to appropriate authorized official(s) and that the copy shall served as the commitment/order for the defendant.

4-20-88	/s/ Reggie B. Walton
Date	Judge

Certification by Clerk pursuant to Criminal Rule 32(d).

4-20-88	/s/ Cheryl Dixon
Date	Deputy Clerk

FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

CIVIL PROTECTION ORDER
(PRO-SE)

IF No. 630-87
SF No. 735804-OA

ANA V. FOSTER, PETITIONER

VS.

MICHAEL FOSTER, RESPONDENT

Upon consideration of the petition filed in this case, and after a hearing, the Court has found that there is good cause to believe that the Respondent has committed or threatened an intrafamily offense within the meaning of Section 16-1001, D.C. Code, et seq. (1981). Therefore:

IT IS HEREBY ORDERED that for a period of 12 months from the date of this order:

The respondent shall not molest, assault, or in any manner threaten or physically abuse the petitioner.

By Consent /s/ Michael Foster

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN FINE OR IMPRISONMENT

Date: 8-12-87 /s/ Robert I. Ingram
Judge

On the date shown below a copy of this order was served personally on all parties who have been ordered to comply with any provision of this order.

Date: 8-12-87 /s/ [sig. illegible]
Deputy Clerk

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

IF No. 630-87
SF No. 735804-OA

ANA V. FOSTER, PETITIONER

VS.

MICHAEL FOSTER, RESPONDENT

MOTION TO ADJUDICATE CONTEMPT

By order of this Court dated _____, 198__, the Respondent was found to have committed or threatened an intrafamily offense within the meaning of D.C. Code Section 16-1001, et. seq. (1981) against the Petitioner. The order directed the Respondent to observe certain conditions which he/she has failed to do, in that: On or about 9/17/87 at 2:30 P.M. on California St. Respondent threatened Petitioner "I'm going to beat you ass". On or about 9/18/87 at 8:50 pm on Wisconsin Ave. Respondent grabbed Petitioner's right shoulder and forced her into a taxi cab. At 10:30 am on 9/18/87 at 4826 8th St. he slapped petitioner on the side of her face and at 12:45 that same day he threatened to knock her head against a wall.

WHEREFORE, the Petitioner asks the Court that a hearing be set on these charges and that a Notice of Hearing and order Directing Appearance be issued requiring the Respondent to appear in Court to answer these charges and to give any testimony required by the Court. Also, that

following the hearing, the Court find the Respondent in contempt of the prior Court order and make all further rulings as the Court finds appropriate.

Date: 9-22-87

/s/ Lesley E. Oloff, Esq.
Deputy Clerk/Corporation Counsel

VERIFICATION

District of Columbia, ss:

Ana V. Foster, being first duly sworn, states that he/she is the Petitioner, that he/she has read and understands the contents of this motion, and that it is true to his/her knowledge or belief.

/s/ Ana V.C. Foster
Petitioner

Subscribed and sworn to before me this 22nd day of September, 1987.

/s/ ME. Foxworth
Notary Public/Corporation Counsel/Deputy Clerk

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

IF No. 630-87
SF No. 735 004-CA

ANA Virginia FOSTER, PETITIONER

vs.

MICHAEL FOSTER, RESPONDENT

MOTION TO ADJUDICATE CONTEMPT

By order of this Court dated August 12, 1987, the Respondent was found to have committed or threatened an intrafamily offense within the meaning of D.C. Code Section 16-1001, et. seq. (1981) against the Petitioner. The order directed the Respondent to observe certain conditions which he/she has failed to do, in that: The Respondent has repeatedly violated a Civil Protection Order, ordering him to not molest, assault, or in any manner threaten or physically abuse Petitioner. In support of this motion, the Petitioner asserts the following: (See attached)

WHEREFORE, the Petitioner asks the Court that a hearing be set on these charges and that a Notice of Hearing and Order Directing Appearance be issued requiring the Respondent to appear in Court to answer these charges and to give any testimony required by the Court. Also, that following the hearing, the Court find the Respondent in con-

tempt of the prior Court order and make all further rulings as the Court finds appropriate.

Date: 11-19-87 /s/ ME. Foxworth
Deputy Clerk/Corporation Counsel

VERIFICATION

District of Columbia, ss:

Ana V. Foster, being first duly sworn, states that he/she is the Petitioner, that he/she has read and understands the contents of this motion, and that it is true to his/her knowledge or belief.

/s/ Ana V.C. Foster
Petitioner

Subscribed and sworn to before me this 19th day of November, 1987.

/s/ ME. Foxworth
Notary Public/Corporation Counsel/Deputy Clerk

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRA FAMILY AND NEGLECT BRANCH

IF No. 630-87
ANA VIRGINIA FOSTER, PETITIONER

v.

MICHAEL FOSTER, RESPONDENT

CONTINUATION OF MOTION TO ADJUDICATE CONTEMPT

1. On or about 9/17/87 at 2:30 p.m. on California St., N.W., Respondent threatened Petitioner by saying, "I'm going to beat your ass."

2. On 9/18/87 at 8:30 a.m. on Wisconsin Ave., N.W., Respondent grabbed Petitioner's right shoulder and forced her into a taxi cab. At 10:30 a.m. that same day, at 4826 8th St., N.W., he slapped Petitioner on the side of her face. At 12:45 p.m. that same day, he threatened to knock her head against a wall.

3. On 11/4/87 at 6:15 p.m., Respondent called Petitioner's home, angry that Petitioner and her mother had gone shopping. Respondent said, "Stop your motherfucking games." That same evening, at 8:00 p.m., Respondent came to Petitioner's apartment and verbally harassed and threatened Petitioner by saying, "Tomorrow, when you leave the house, be careful."

4. On 11/5/87 at 2:00 p.m., at 16th and Columbia, N.W., Respondent then followed Petitioner to her work place. On the same day, at 10:30 p.m., Respondent called Petitioner at her work place, shouted at her on the phone

and threatened to beat up people as they left Petitioner's work place, and threatened to blame Petitioner for the consequences.

5. On 11/6/87 at 12:00 a.m., Respondent followed Petitioner and her mother from Petitioner's work place to the bus stop at Kalorama and Columbia, N.W., The police suggested to petitioner that she file charges, since she has a Civil Protection Order. Immediately thereafter at 12:15 a.m. at Kalorama Park. Respondent grabbed Petitioner and threw her against a parked car. Her back and her head hit the car. She lost consciousness. Respondent then fled the scene. Petitioner sustained contusions on her forehead, a cut on her upper lip, and a loosened upper tooth. Her mother and two passersby witnessed the incident. The passersby called the police, who called an ambulance which took Petitioner to George Washington University Hospital emergency room.

6. On 11/9/87, Respondent called Petitioner at her work place and said, "Keep alive as long as you can: you will see my face again."

7. On 11/10/87, at 7:55 p.m., Respondent pounded on the windows of Petitioner's apartment for 5 minutes, saying, "I'm back." Petitioner share[s] an apartment with her mother who also has a C.P.O., against the Respondent. That order requires that Respondent stay completely away [from] the residence.

8. On 11/11/87, in the evening. Respondent called Petitioner at home and said, "The Hilton Hotel is not going to save you."

9. On 11/12/87 at 12:00 p.m., Respondent called Petitioner at home and threatened her with, "Virginia, I will wait for you outside and I'm going to blow out your brains."

10. Respondent has continually harassed and threatened Petitioner over the phone since she has returned to live with her mother.

Each of the above listed incidents are violations of the C.P.O. issued by this court.

Respectfully Submitted

Leslye E. Orloff, #375962
Clinical Legal Latina/Ayuda
1736 Columbia, Rd. N.W.
Washington, D.C. 20009
(202) 387-0434

/s/ ANA V. C. FOSTER
Ana Virginia Foster

DISTRICT OF COLUMBIA, ss:

I, Ana Virginia Foster, first being duly sworn, do hereby state that I have been read this motion in Spanish and that I understand its content and that the above information is true to the best of my knowledge.

/s/ ANA V. C. FOSTER
Ana Virginia Foster

Subscribed and sworn before me this ____ day of _____, 1987.

_____
Notary Public, DC

My Commission expires: _____

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

IF No. 630-87
SF No. 735804-OA

ANA V. FOSTER, PETITIONER

vs.

MICHAEL FOSTER, RESPONDENT

AMENDED
MOTION TO ADJUDICATE CONTEMPT

By order of this Court dated August 12, 1987, the Respondent was found to have committed or threatened an intrafamily offense within the meaning of D.C. Code Section 16-1001, et. seq. (1981) against the Petitioner. The order directed the respondent to observe certain conditions which he/she has failed to do, in that: The Petitioner is amending her motion filed on November 19, 1987 to include all incidents in that motion in addition to the following: (See Attached)

WHEREFORE, the Petitioner asks the Court that a hearing be set on these charges and that a Notice of Hearing and Order directing appearance be issued requiring the respondent to appear in Court to answer these charges and to give any testimony required by the Court. Also, that following the hearing, the Court find the Respondent in contempt of the prior Court order and make all further rulings as the Court finds appropriate.

Date: 5/24/88 /s/ M.E. Foxworth
Deputy Clerk/Corporation Counsel

VERIFICATION

District of Columbia, ss:

Ana V. Foster, being first duly sworn, states that he/she is the Petitioner, that he/she has read and understands the contents of this motion, and that it is true to his/her knowledge or belief.

/s/ Ana V.C. Foster
Petitioner

Subscribed and sworn to before me this 24th day of May, 1988.

/s/ ME. Fox Won
Notary Public/Corporation
Counsel/Deputy Clerk

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

IF No. 630-87

ANA VIRGINIA FOSTER, PETITIONER

VS.

MICHAEL FOSTER, RESPONDENT

CONTINUATION OF MOTION TO ADJUDICATE CONTEMPT

1. On 5/21/88 at 1:45 PM at 1601 Argonne, Respondent threw Petitioner down basement stairs, kicking her body. Respondent also pushed her head into the floor causing head injuries. Petitioner lost consciousness.

2. On 5/22/88 Respondent threatened to kill her. He was armed.

3. On or about 5/18/88 Petitioner went to 3636 16th St. #A868. Respondent had shredded the furniture and smashed the television at that address.

4. From 11:50 PM on 5/16/88 to 1:30 on 5/17/88, Respondent kidnapped Petitioner and a taxi driver and forced them to drive around Rock Creek Park and to Silver Spring in a taxi. About 1:30 AM, the Montgomery County police stopped them. Respondent called 1601 Argonne threatening to kill the Petitioner.

5. Throughout April and May 1988 at 3636 16th St. #A868. Respondent verbally abused Petitioner.

6. On or about 03/26/88 at 1601 Argonne, Respondent called threatening Petitioner.

7. On or about January or February 1988, Respondent called and said that he would kill the Petitioner's family if she (the Petitioner) didn't let him come back to her.

8. On or about January 14 Respondent told Petitioner that four men were watching her and that one was going to kill her.

Respectively Submitted,

/s/ LESLYE E. ORLOFF

Leslye E. Orloff #375902
Clinical Legal
Latina/Ayuda
1736 Columbia Rd. NW
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(202) 387-0434

/s/ ANA V. C. FOSTER

Ana Virginia Foster

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION

Case Number IF-630-87

ANA FOSTER

v.

MICHAEL FOSTER

Case Number IF-631-87

ELVIRA RIVAS

v.

MICHAEL FOSTER

VOLUME I OF III

Washington, D.C.
August 8, 1988

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[8] • • • • •

MR. SIGNET: Your Honor, I would bring to the Court's attention the fact that there is a pending body of matter as an outgrowth of these events, that went before the — that went to the grand jury.

THE COURT: Did it? Okay.

[9] MS. ORLOFF: That's true, Your Honor. In fact, some of the witnesses we had subpoenaed will probably not be called for that reason, because the U.S. Attorney has asked us not to call the officers unless we really need them.

THE COURT: All right. Okay.

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION

Case Number IF-630-87

ANA FOSTER

v.

MICHAEL FOSTER

Case Number IF-631-87

ELVIRA RIVAS

v.

MICHAEL FOSTER

VOLUME III OF III

Washington, D.C.
August 10, 1988

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[309] • • • • •

MR. SIGNET: Your Honor, in that this is essentially a criminal proceeding, we would move at this time for a judgment of acquittal on all counts.

The witnesses have testified in a rambling manner with very few specifics about any features of the Civil Protection Orders in either case.

The series of telephone calls were essentially unsubstantiated in that there was nobody who either [310] monitored the call or could testify they heard the call, other than the petitioners.

With regard to the events of the 21st of May, during cross examination and then in redirect, Ms. Foster presented several different versions of it.

Mr. Collins, who is the security guard, desk clerk at the apartment building, made a thorough search of the building and the only person he encountered in the building that he did not know was a gentleman with a machete who he did not identify as Michael Foster.

He was the only person down there who had either the opportunity or the capability, based on Mr. Collins's testimony, to subject Ms. Foster to the injuries.

We have had conflicting testimony from Mrs. Foster, where she was in regard to the door. She testified later in the trial hearing that she could not see the door from where her apartment was.

We have seen that both in the sketch done at the time of the cross examination and in the view of the photographs taken later in that day.

One could not see the door to that stairwell from the apartment door to Mrs. Foster's and Mrs. Rivas's apartment.

The other witnesses have testified that none of [311] them observed any of the activities that were claimed by – claimed by Mrs. Foster to have occurred. We don't dispute the fact that she was injured. We stipulated to the medical reports of both incidents where she was taken to the hospital.

We do not believe, however, that the Petitioner has shown that Michael Foster was in fact the person who perpetrated these incidents, nor made any telephone calls.

In regard to Ms. Rivas, she has testified that she hung up the phone before identifying who the person on the phone was. She reacted to the phone calls in a very brusque manner, just shutting them off and turning—hanging the phone up.

We have also established that she understands very little English, that she would have any communication with Michael Foster through essentially an interpreter, a family member who would speak in a very limited conversation with her.

We don't believe the evidence presented by Mrs. Rivas or by Mrs. Foster shows beyond a reasonable doubt that Michael Foster was in fact either there or committed any of the alleged occurrences.

And we move for a judgment of acquittal on all counts.

THE COURT: Let me just glance through something [312] a minute.

MS. ORLOFF: Your Honor, it is our position that the witnesses that we have presented as to the various incidents have been credible and that their testimony has supported each other. They have been complementary and non-contradictory.

So, it is our position that our clients' testimony held up on cross, by and large, and that in fact we have provided sufficient evidence to prove beyond a reasonable doubt that Michael Foster—

THE COURT: Well, that's not the test right now. Now we're at the prima facie case level.

MS. ORLOFF: We believe we have made our prima facie case, with the exception—there are a few incidents which I would be willing to concede at this point.

THE COURT: Why don't you just do that, because it will make it easier for Mr. Signet in how he approaches his defense.

MS. ORLOFF: That would be fine.

THE COURT: I have before me—at your suggestion I Xeroxed it out of the file, the request for the extention of the Civil Protection Order in both cases, in which they set forth the series of—the points which both sides pretty much followed.

[313] If there's something other than that, I'll dig it out of the file. But I have those before, so why don't you just—that's 34 A, B, C, D.

Why don't you just go through that and identify the points that you do not wish to proceed on and that will make it easier for both of us.

MR. SIGNET: Okay. Could we start with Petition for Ms. Foster.

MS. ORLOFF: That's what I—

THE COURT: Okay.

MS. ORLOFF: 4-I, which is January and February.

That was the answer that her testimony on here states, that we weren't able to get the Officer.

THE COURT: All right.

MS. ORLOFF: 4-L, the May, June verbal abuse.

THE COURT: All right.

MS. ORLOFF: 4-O, which is the threat to kill while—

MR. SIGNET: That's the first four of them?

MS. ORLOFF: Yes.

THE COURT: Yes, because it's kind of, O, P, O, P, so we'll make that "Q" and "R," the last two numbers for record purposes.

All right.

MS. ORLOFF: And the final one, Your Honor, is [314] an issue Your Honor has not allowed testimony over our objection, and that would be "N." We are not willing to cede on it, but it is my understanding that that's on that Your Honor may—

THE COURT: I have already ruled on that one.

MS. ORLOFF: It's over my objection.

THE COURT: Sure.

And in Ms. Rivas's case, we're ready. We believe that we've met our burden on all of them.

I will point out to Your Honor, something that I want to clarify for the record. Some of these incidents in Ms. Rivas's case were violations of her order.

She didn't see them personally. Other family members testified to them in court.

THE COURT: I understand that.

MS. ORLOFF: We believe that—

THE COURT: How about "E"? What is your theory on "E"?

MS. ORLOFF: Well, Your Honor, in the past, as she testified before—today, there were at least two months in which she received, after the Civil Protection Order there were at least two months in which she said she received phone calls which contained threats to kill.

I understand that those allegations in and of themselves are not contained in—

[315] THE COURT: Right.

MS. ORLOFF: —the petition. It's probably, I believe, an oversight in our area office or in interviewing.

However, given that history, the fact that there were continual phone calls from him, which she was able to identify by voice and therefore shut down, and she did testify that they were excessive.

And Anna testified that they were excessive, Ms. Foster, that—so excessive that she needed to disconnect the phone. And that is a form of harassment.

THE COURT: She's not charged. It doesn't say in the protection order not to harass somebody.

MS. ORLOFF: Well, Your Honor, in the context of domestic violence, we would argue that it says, do not

molest, assault, or in any manner, any manner threaten or physically abuse.

And to the extent, given the history and the testimony that Your Honor that Your Honor has heard today about the history of this case, and we're only talking now about August forwards. There is history that precedes this that we have not—that that, and given the history of telephone threats, the continuous calling is a form of a threat.

In any manner—and there are manners which threats can take, in the context of the relationship between [316] the parties, that that behavior could be seen as a threat. And that's what we've done.

THE COURT: I suppose on a pure legal point I would agree with you. But I also think in a criminal case, the defendant is entitled to more specific notice of the nature of the charge and I don't think that to allege harassment is like saying disorderly, without saying what it means.

But, it's too vague, so the Court will not consider "E" as relates to Elvira's.

The Court will deny the motion as to the wife, Anna's petition, except at this time, based on the burden of proof level, the Court will grant the motion as to "F."

And as to "H," the Court is not satisfied if those words as such, in spite of the context of this dispute, constitutes a legal threat.

MS. ORLOFF: Your Honor, would it be possible for me to address them?

THE COURT: No. I'm not going to hear anything further.

MS. ORLOFF: Will Your Honor note my objection?

THE COURT: Sure.

There is on count "M," the Court is not satisfied that there was any kidnapping or illegal conduct as relates to that event. And there was no evidence, that [317] the Court

notes on that, and there was a subsequent call that night of a threat to kill.

So, the Court will grant the motion as to that count and deny it at this time.

As to all other counts, and you can proceed when ready.

MR. SIGNET: Just so I make sure, you are granting the motion that Ms. Rivas—I mean, Ms. Foster, F, H. and I?

THE COURT: F, H, and—well, "I" was withdrawn. I'm granting it as to "M."

I granted the motion on "M" and she sought to withdraw, which is tantamount to a Judgment of Acquittal. They are declining to seek forward, so in order that jeopardy would attach to the Judgment of Acquittal would be granted for each of those that they—that Petitioner elected not to proceed forward, as well as the ones the Court has ruled on.

MR. SIGNET: So, we have essentially done away with F, H, I?

THE COURT: You're going a little fast.

MR. SIGNET: Oh, I'm sorry.

THE COURT: F, yes. H, yes. I, yes, L, yes.

MR. SIGNET: "M"?

THE COURT: "N" as in—

[318] MR. SIGNET: "M" as in Michael.

THE COURT: No, "N" as in—"M" as in Mike, "N" as in Nan, and "O" was withdrawn so "O" is out.

All others remain as to Anna Foster and as to Eilvira Rivas. The "E" is out and all others remain at this time under the burden of proof level of prima facie case.

* * * * *

[400] (Whereupon, a brief recess was taken.)

THE DEPUTY CLERK: This Court is back in session, Honorable Judge Murphy presiding. Please come to order.

THE COURT: First, I'd like to thank the Interpreters for their assistance to the Court, not only those present but also Mr. Galvan.

Having no knowledge of the Spanish language, it's enormously important and I found the interpretations seemed to pick up, not only the literal language but some of the nuances, particularly valuable in a case of this nature where there are a lot of personal relationships between the parties.

So, I'm grateful for the services of the Interpreters as well as that of counsel.

[401] Mr. Foster, would you please stand.

Mr. Foster, you're before the Court on what has been a series of criminal allegations, conduct which is alleged to be in violation of the orders of Judge Tignor which, if violated willfully and deliberately, constitute a criminal contempt which is punishable like any other crime even though we're in kind of the civil family side of the Court.

The Court is satisfied that, beyond a reasonable doubt, that you violated the Court's order on four occasions. The Court is not satisfied beyond a reasonable doubt of the other alleged incidents, or they are too vague and lacking in specificity to justify the remedy of a criminal conviction.

In Case 630 involving your wife, the Court is satisfied beyond a reasonable doubt that within the District of Columbia, on September 17th, 1988, you in fact threatened her by saying to her the words, "I'm going to beat your ass."

The Court is satisfied beyond a reasonable doubt that you did, contrary to your testimony, assault your wife near Kalorama Park, 11/6/87, that leading to the injuries described and testified to.

The Court is also satisfied beyond a reasonable doubt that you committed the assault alleged to have [402] occurred, and the Court is satisfied did in fact occur on May 21st, 1988 at the Argonne address, which led to your wife's hospitalization.

As relates to 631, the case involving your mother-in-law, the Court is satisfied beyond a reasonable doubt that on

November 4th, 1987, you did visit the premises in violation of the stay-away order.

This Court found beyond a reasonable doubt of the assault on the 6th of November, the Court believes that that event merged with the contempt involving your wife and did not justify a separate action by the Court.

The Court just did not find, in large measure, your testimony credible. It defies common sense. On the other hand, the testimony of your wife and some of her witnesses was significantly exaggerated and overstated, both credibility and exaggeration being commonplace in cases of this nature.

As relates to the order, involving the stay away order, I've already ruled as to your mother-in-law. As to the one involving your wife, I will order a stay away from the home, person or workplace.

I will not include telephone calls but you will appreciate the consequences of contact that could lead to new allegations that could put you back in trouble again. So, I'll leave that to your own discretion, but I do not [403] believe that barring telephone calls per se are justified in this case in spite of what has occurred.

Now, counsel, what is Mr. Foster's status in the system? Obviously he's in custody, but I assume that's regarding the matter that they brought him back from Phoenix on, because there isn't any bond or anything in these jackets.

MR. SIGNET: He was under a $20,000 bond in a felony case, Your Honor. He was also placed on a $5,000 bond in each of these two cases—

THE COURT: I don't remember that being on the jacket.

MS. ORLOFF: By Judge Morrison.

THE COURT: Is that shown on the jacket?

MS. ORLOFF: She did the last entry prior to this one—the second to the last, prior to the—

THE COURT: Well, be that as it may, do you know—do you represent him on his criminal case?

MR. SIGNET: No, Your Honor. He's represented by Mr. Kravitz. I believe he's from PDS.

THE COURT: Okay. Do you know the status of those cases?

MR. SIGNET: I believe in that case there was a preliminary hearing. I don't know if the case was—

MS. ORLOFF: Your Honor, I know.

[404] THE COURT: Okay.

MS. ORLOFF: The indictment—the grand jury, not here, but the grand jury is scheduled for August 18th.

THE COURT: Oh, so is it—it's been held for the action of the grand jury but no action has been taken?

MS. ORLOFF: Right.

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
INTRAFAMILY AND NEGLECT BRANCH

IF No. 630-87
SF No. 735804-OA

ANA V. FOSTER, PETITIONER

vs.

MICHAEL FOSTER, RESPONDENT

FINDING OF FACT, ORDER OF ADJUDICATION AND COMMITMENT

The motion to adjudicate the Respondent in contempt for failure to comply with the order of this Court dated Aug. 8, 1988.

FOUND, as a fact that the Respondent has failed and refused to obey the order of this Court in that on 9/17/87 threatened to do bodily harm to the petitioner, on 11/6/87 Respondent assaulted petitioner in the vicinity of Kalorama Park, on May 21, 1988 at 1601 Argonne Place Respondent assaulted Petitioner, although able to do so, by which reason Respondent is in contempt of this Court; therefore it is

ORDERED, that the United States Marshal in and for the District of Columbia is directed to take into his custody the Respondent, Michael Foster, and commit him to the District of Columbia Jail for a period of 450 days. consec. (150 days each count)

10/6/88 — Date

/s/ Tim Murphy — Judge

SUPERIOR COURT
OF THE
DISTRICT OF COLUMBIA
Holding a Criminal Term
Grand Jury Sworn in on November 21, 1988

Criminal No: F-8415-88
Violation: 22 D.C. Code 504; 2307; 501
(Assault; Threatening to Injure a Person;
Assault with Intent to Kill)

THE UNITED STATES OF AMERICA

v.

MICHAEL FOSTER

The Grand Jury charges:

FIRST COUNT:

On or about November 6, 1987, within the District of Columbia, Michael Foster unlawfully assaulted and threatened Ana Foster in a menacing manner. (Assault, in violation of 22 D.C. Code, Section 504)

SECOND COUNT:

On or about November 12, 1987, within the District of Columbia, Michael Foster threatened to injure the person of Ana Foster. (Threatening to Injure a Person, in violation of 22 D.C. Code, Section 2307)

THIRD COUNT:

On or about March 26, 1988, within the District of Columbia, Michael Foster threatened to injure the person of Ana Foster. (Threatening to Injure a Person, in violation of 22 D.C. Code, Section 2307)

FOURTH COUNT:

On or about May 17, 1988, within the District of Columbia, Michael Foster threatened to injure the person of Ana Foster. (Threatening to Injure a Person, in violation of 22 D.C. Code, Section 2307)

FIFTH COUNT:

On or about May 21, 1988, within the District of Columbia, Michael Foster assaulted Ana Foster with intent to kill her. (Assault with Intent to Kill, in violation of 22 D.C. Code, Section 501)

/s/ JAY B. STEPHENS
Attorney of the United States in and for the District of Columbia

A TRUE BILL:

Foreperson.

Supreme Court of the United States

No. 91-1231

UNITED STATES, PETITIONER

v.

ALVIN J. DIXON

ORDER ALLOWING CERTIORARI.

Filed April 27, 1992.

The petition herein for a writ of certiorari to the District of Columbia Court of Appeals is granted.

April 27, 1992